

<b>DIVISION OF MINED LAND RECLAMATION</b>		<b>PROCEDURE NO.</b>	3.1.06
<b>PROCEDURES MANUAL</b>		<b>ISSUE DATE</b>	September 23, 2005
<b>SUBJECT</b>	Citizen Complaint Investigation	<b>Section</b>	Enforcement & CS
		<b>Last Revised</b>	8-18-00

### **OBJECTIVE AND INTENT:**

To ensure DMLR personnel conduct an expedient, accurate, and thorough investigation of each citizen complaint per the regulatory program.

### **PROCEDURES:**

Citizen complaints and related information concerning coal surface mining operations shall be referred to the Enforcement Secretary.

The Enforcement Secretary shall:

- notify (by phone or encrypted radio message) the appropriate Field Inspector or Supervisor responsible for the geographic area.
- record the initial information into the DMLR computer system. (The system assigns a sequential control number for the complaint, and generates an intray note to appropriate DMME personnel.)
- copy and forward any written information (e.g. letters from complainant, government officials, or attorneys; OSM 10 day notices) to the Inspector and appropriate DMME personnel.
- in the event the complaint is subsequently withdrawn, notify the Inspector, Supervisor, and Reclamation Program Manager - Geology (RPM-G) (if technical assistance was requested) - so the investigation can be halted and file closed.

The Inspector or Supervisor shall initiate an investigation of the complaint as required under Part 4 VAC 25-130-842 of the regulations.

### **Investigation :**

The Inspector shall make every attempt to begin the investigation on the same day the complaint is received. (If the Inspector is unavailable to initiate the investigation, the Field Supervisor shall conduct the initial investigation, or assign it to another inspector.) Investigation of each complaint shall begin within 5 days.

The Inspector should make every attempt to contact the complainant prior to making an onsite inspection. This will allow the Inspector an opportunity to gather preliminary data about the alleged problem.

The Inspector should notify the company of the problem (if the violation is being attributed to an operation under the Division's jurisdiction), so it may immediately initiate corrective action.

The Inspector shall inform the complainant:

- of the Division's jurisdiction in the matter,
- the extent of potential action it may take, and
- that the Division's complaint investigation report (which includes the identity of the complainant) and findings would be open to public inspection under the Virginia

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Freedom of Information Act.

The Inspector shall provide the complainant with a copy of the “Coal Mine Complaint Procedure Citizen’s Guide”.

The Inspector shall notify the complainant as far in advance as practical as to when an onsite investigation will occur, so the complainant may accompany the Inspector during the inspection (45.1-246.1(H) of the Act and 4 VAC 25-130-842.12 of the regulations).

At the time of the onsite investigation, should the complainant appear to be under the influence of alcohol or drugs, or be in the possession of a firearm, the Inspector shall not allow the complainant to accompany him or her onto the regulated site. If assistance from the State Police or local law enforcement authorities is required, the Inspector should immediately contact the Division office by radio, or the State Police/local law enforcement authorities by telephone.

The Inspector shall inform the complainant that he or she must provide his or her own safety equipment and heed all safety laws and regulations during the inspection. The complainant may ride in the Inspector’s vehicle during the inspection (from the point where the public road meets the entrance of the operation’s mine haulage or access road). The complainant may inspect, along with the Inspector, only the area of the permit subject to the complaint per 4 VAC 25-130-842.12(c) of the regulations.

During the onsite investigation, the complainant must act in a responsible manner. If the person does not act in a responsible manner, the Inspector should immediately halt the inspection and inform the complainant that he or she must leave the site (with the Inspector).

Should the complainant refuse to leave the site, the Inspector shall inform the person:

- that in order to remain on the site, the complainant must first obtain the operator’s or land owner’s permission; and
- that the refusal to leave the site could subject the complainant to a trespass action by the landowner, operator, or lease holder.

The Inspector shall:

- ensure the citizen complaint investigation is conducted in an accurate and impartial manner.
- take appropriate action (necessary to resolve the complaint) in accordance with the law, regulations, and policies administered by the Division.
- notify the other regulatory agencies with jurisdiction in the case - should the complaint concern an alleged fish kill, chemical spill or any other situation which poses an actual or potential threat to the environment or to the public safety (e.g., the Department of Environmental Quality at Abingdon, the Dept. of Game and Inland Fisheries, Dept. of Emergency Services, etc.).
- contact the Division of Gas and Oil (DGO) by telephone or e-mail if the problem is related to a gas/oil well or pipeline or involves a DGO permitted site. The respective inspectors will discuss the problem and decide which division has jurisdiction in the

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matter, if any. If the inspectors determine that the complaint does not pertain to a DGO permitted operation, the DMLR inspector will retain jurisdiction and follow-up with the complainant.

#### Report Preparation and Follow-up:

The Inspector shall fully document all information pertaining to the citizen complaint by:

- utilizing the Complaint Investigation report (**DMLR-ENF-032S**),
- utilizing reports from the technical staff,
- utilizing any available Polaroid, 35 mm photographs, or video which were taken of the alleged problem (by the Inspector, complainant, company representative, or other Division personnel), and
- utilizing any other evidence related to the specific complaint.

When the complaint involves blasting, the Inspector shall also:

- complete the blasting complaint form (**DMLR-ENF-099**) and document all information which relates to the alleged blasting violation.
- list the name and certification number of the certified blaster who conducted the blast.

The Inspector shall forward the investigation report and findings to the Supervisor within 10 days of receiving the complaint. The Supervisor shall review the material for accuracy, completeness, and neatness prior to forwarding it to the Enforcement Secretary at the Big Stone Gap office.

If it is impossible to complete the investigation within 10 working days (due to waiting for water sample results, technical assistance, etc.), the Inspector shall prepare a preliminary report which describes the initial investigation findings, and shall submit it to the Supervisor. The Inspector's final report shall be submitted to the Supervisor as soon as it is completed.

#### Technical Investigations:

During technical investigations of complaints, the investigator shall keep the citizen and company apprised of the investigation process. If the technical investigator will not be able to meet the time frames that the citizen was given, he or she should personally contact the citizen and inform the person:

- of the delay,
- the reason for the delay,
- the expected completion date of the investigation, and
- when the citizen could expect to receive a copy of the report.

Citizen contacts should be noted in the investigation file as a note or phone log (also include on the PC based tracking system). The Inspector should also be informed of the delay.

#### Reports:

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Whenever the Inspector prepares a report (**DMLR-ENF-044S**) addressing the complaint, the “COMPLAINT” block must be checked, and the complaint control number listed after the # symbol (or in the upper right corner of the form).

The Inspector shall document the final disposition of the investigation on form **DMLR-ENF-032S**. This report shall indicate whether the Division had jurisdiction, if any enforcement action was issued or would be issued, or whether the Division had determined that no violation existed.

If a complaint results in the issuance of a repair/replacement order or enforcement action, final disposition (close-out) may not be conducted until the required remedial/corrective action has been completed, or the enforcement action has been terminated or vacated.

The Inspector shall enter all investigations of complaints into the DMLR system per the “Enforcement Computer Users Manual” directions.

#### Notification of Investigation Results to the Complainant:

The complainant shall be notified in writing by the Division within 15 days of receiving the complaint.

The notification shall inform the complainant of:

1. (If an inspection was conducted) the enforcement action(s) taken by the Division, or explain why enforcement action was not taken.
2. (If an inspection was not made) the reason the Division did not inspect.
3. the right to request an informal or formal administrative review of the Division’s action or inaction.

#### Office Processing of Complaint Investigations:

Upon receipt of the citizen complaint investigation materials from the Supervisor, the Enforcement Secretary (Big Stone Gap office) shall:

- review, record, make necessary copies of, and distribute the complaint investigation materials to appropriate DMLR personnel.
- forward a copy of the Inspector’s or Division’s written report and findings to the complainant, the person or company alleged to be in violation, the DMME Public Relations Manager, and the Inspector.
- in addition to the above, make sufficient copies of the complaint investigation materials (and of all follow-up reports, enforcement actions, or other data related to the complaint investigation) for the:
  - a) Enforcement Section file (original investigation materials).
  - b) Assessment Officer (if complaint results in issuance of NOV/CO), and
  - c) RPM-G (for cases which involved technical assistance).
- monitor complaint data for accuracy and retrieval.

#### Tracking Complaints:

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**Complaint Investigation Tracking System** - The appropriate Technical and Enforcement staff shall maintain and utilize this automated complaint status system as follows:

- the Enforcement Section shall enter all data regarding complaints for which technical assistance is not required.
- the Technical personnel shall enter data from date assistance is requested until the technical report is filed.

#### Technical Assistance Procedure:

If the Inspector or Supervisor needs technical assistance to determine the nature or cause of an alleged violation or problem, the Inspector will code the complaint report as “TA” (technical assistance) in the complaint status block. The Supervisor will review the report and acknowledge the technical assistance request by initialing the complaint investigation report. If technical assistance is required during the investigation of an emergency situation, the Inspector’s request shall be immediately communicated by telephone or e-mail to the Reclamation Services Manager, who will notify the RPM-G.

Upon loading the complaint report into the DMLR Enforcement data system, a system generated note for technical assistance with the complaint will be sent to the RPM-G. A paper copy of the complaint investigation report, including any maps, data, or other relevant information will be forwarded from the Inspector to the RPM-G for assignment to the appropriate technical personnel.

If either the Supervisor or Reclamation Services Manager feels that technical assistance is not warranted, the person objecting to the assistance shall prepare a memo to the Inspector setting out why the assistance would not be appropriate, and shall provide direction as to how the Inspector should handle the situation.

The technical investigator shall:

- establish a review completion date (no later than 20 days from the date the Inspector or Reclamation Services Manager requested technical assistance, whichever is later).
- begin immediately to gather or request relevant data, and shall (if necessary) schedule a field visit with the Inspector or Supervisor to conduct the initial site investigation (no later than 15 days from the date the Inspector or Reclamation Services Manager requested technical assistance, whichever is later).
- determine if additional onsite investigations or data are required, and (in writing) shall estimate the date the investigation will be completed and the final report prepared. This determination shall be forwarded to the appropriate section manager for review. (If the anticipated review period will exceed 20 days, the technical investigator should also explain the special conditions or circumstances, which are present in the case that prevents a more expedient decision.)
- send a letter announcing the anticipated completion date of the technical investigation to the complainant, Inspector, Reclamation Services Manager, and the coal company involved.

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The RPM-G shall enter the investigation's projected completion date into the computer tracking system.

The technical reviewer and Inspector shall cooperate and provide necessary assistance to one another during the investigation process. Preliminary findings should not be disclosed or discussed with the complainant, permittee, or other outside party.

The technical investigator shall proceed with the investigation and upon completion, shall submit his or her draft written report for review by appropriate staff. The technical investigator may request assistance from other technical reviewers in gathering and interpolating data, and finalizing the technical report. Any comments made by the reviewers shall be listed on or attached to the "Technical Report Comment/Approval Sheet".

The technical reviewer and appropriate section managers, as needed, shall review the final technical report findings with the Inspector. Upon finalization of the report, the technical investigator shall prepare and forward sufficient copies of the final report to the Reclamation Services Manager for distribution.

The RPM-G shall enter the date the Technical Section's report was finalized into the tracking system.

Within 5 working days from receipt of the technical report, the Inspector shall discuss the report findings with the complainant. The Inspector shall hand deliver to the complainant a copy of the report with the Reclamation Services Manager's cover letter (advises complainant of administrative appeal rights).

If the Inspector is unfamiliar with the techniques or procedures used in the evaluation, he or she may request that the technical reviewer attend the review with the complainant.

The Inspector shall prepare a report (**DMLR-ENF-032S**) documenting the final disposition of the investigation.